

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 7476**

**BILL NUMBER:** HB 1656

**NOTE PREPARED:** Feb 4, 2009

**BILL AMENDED:** Feb 3, 2009

**SUBJECT:** State and Local Highway Funding.

**FIRST AUTHOR:** Rep. Austin

**FIRST SPONSOR:**

**BILL STATUS:** CR Adopted - 1<sup>st</sup> House

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☒ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) *Public Works Contracts:* The bill provides that contracts for public works projects may not be awarded to a contractor that does not: (1) employ residents of Indiana as at least 80% of the employees working on the contract; and (2) enter into subcontracts only with subcontractors that employ residents of Indiana as at least 80% of the employees working on the contract. It applies this restriction to contracts entered into by the Public Works Division (PWD) of the Department of Administration (DOA), any state agency or commission entering into a public works contract, the commission governing the Ports of Indiana, the Department of Transportation (INDOT), and units of local government.

*Reporting Requirements:* The bill requires the Commissioner of the Department of Administration to prepare an annual report for the public and the Legislative Council stating, for the contractors awarded public works contracts by the state and the subcontractors with which these contractors entered into subcontracts, the percentage of the contractors' and subcontractors' employees working on the public works contracts who are residents of Indiana.

*Indiana Preference:* The bill requires certain public works projects to use Indiana-produced steel or foundry products and materials, equipment, and durable goods made in Indiana.

*Tolling:* The bill prohibits tolling on an interstate highway project between Interstate Highway 465 and Interstate Highway 64. It prohibits the state from issuing a request for proposals for, or entering into, a public-private agreement concerning a project between Interstate Highway 465 and Interstate Highway 64.

*Economic Stimulus:* The bill requires that federal funds distributed to the state as part of an economic stimulus effort by the federal government to revive the United States economy must be appropriated by the

General Assembly before they may be expended.

*Appropriations:* The bill appropriates \$1.0 B from the Major Moves Construction Fund (MMCF), and it specifies certain conditions for the use of the money.

**Effective Date:** (Amended) Upon passage; July 1, 2009.

**Explanation of State Expenditures:** (Revised) *Public Works Contracts:* The bill would have indeterminate fiscal impact on public works projects. Costs for the DOA, a state agency or commissions contracting for public works, the Ports of Indiana, and the INDOT could increase to the extent that a low-cost bidder who does not employ the required proportion of Indiana residents or who subcontracts with a subcontractor who does not employ the required proportion of Indiana residents may not be granted a contract. Also, contracts awarded to contractors that fail to maintain or who's subcontractor fails to maintain the required proportions of Indiana residents are terminated, reinitiating the contracting process. However, some of these costs may be offset by the contractor or subcontractor being subject to a Class B infraction for failing to employ the required proportion of Indiana residents. A separate infraction applies for each nonresident employed in excess of the allowed number of nonresidents. Infraction penalties are deposited in the state General Fund.

*Public Works Contracts-Reporting Requirements:* Before August 15 of each year, beginning in 2010, the PWD, state agencies or commissions entering into a public works contract, the Ports of the Indiana Commission, and the INDOT are to report to the Commissioner of the Department of Administration on the percentage of employees employed by contractors or subcontractors who work on each contract and who are residents of Indiana. The Commissioner is to compile and make available this information for the public and the Legislative Council before October 1 of each year.

*Indiana Preference:* The bill could increase the cost of public works projects for public agencies by providing a differential of 15% or 25% of the bid or offered price of a material, equipment, or durable good of foreign origin. The bill allows the public agency head contracting for the construction, reconstruction, alteration, repair, improvement, or maintenance of a public works project to determine in writing that using material, equipment, or durable goods made in Indiana would benefit the state or local economy and increase the differential from 15% to 25%; or that there are not sufficient quantities of Indiana-made goods to meet the public works project requirements thereby not applying the Indiana requirements to the public works contract.

The bill also removes a preference for United States steel and foundry products and, instead, applies the preference to Indiana-made steel and foundry products.

Further, the bill requires the DOA to develop criteria to determine whether steel or foundry products are produced in Indiana and to develop criteria for determining whether materials, equipment, and durable goods are produced in Indiana. It requires the DOA to publish the criteria and maintain a list of businesses and products that meet the criteria on its website.

The reporting requirements, criteria development, and list maintenance could minimally increase costs to the DOA and other contracting agencies. The funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the

requirements of this bill will depend upon legislative and administrative actions.

*Appropriations:* The bill makes appropriations from the state Major Moves Construction Fund (MMCF) of \$1.0 B for the period July 1, 2009, to June 30, 2011. Counties, cities, and towns receive \$800 M and the INDOT receives \$200 M. The money appropriated may not include any money that is appropriated and allotted to, appropriated to, or planned by the INDOT for expenditure on the extension of I-69 from Indianapolis to Evansville. If the appropriation exceeds the balance of MMCF, each appropriation is reduced proportionally. Also, money not appropriated by counties, cities, and towns by January 1, 2011, reverts to the MMCF.

The I-69 project is projected to receive \$575 M between 2009 and 2015. Assuming that the full amount for the I-69 project will come from the MMCF, it will require about \$1.58 B for both the appropriations in this bill and the I-69 funding. The MMCF had a balance of \$2.0 B on February 2, 2009. Estimates of current statutory obligations and appropriations result in available funds of about \$1.56 B in the MMCF. On March 15, 2011, the Next Generation Trust Fund will distribute accrued interest over and above its principal to the MMCF.

#### *Background and Additional Information -*

*Public Works Contracts- Resident of Indiana:* A resident of Indiana is defined as a person at least 18 years old and who has a registered motor vehicle in Indiana, is registered to vote in Indiana, has a child enrolled in an elementary or secondary school in Indiana, or who derives more than one-half of the person's gross income from sources in Indiana. However, if a person only meets the income factor, the person may not be a resident of Indiana if the preponderance of the evidence of the first three factors is not met.

*Contractor and Subcontractor Qualifications:* Currently, the PWD requires contracts and subcontractors to be certified prior to bidding or performing work under contract for which the cost is estimated at more than \$150,000. INDOT requires a form outlining the contractor's experience and financial condition for prequalification before bidding on contracts for the maintenance or construction of highways, bridges, and appurtenances.

*Indiana Preference- Steel and Foundry Products:* For CY 2008 the state had about \$59 M in public works projects; a rough estimate is that \$30 M of the projects involved steel or foundry products, and steel and foundry product costs were about 15% of the project costs. There is a 15% premium for the use of United States steel and foundry products, resulting in an estimated premium expense of \$675,000, or about 2.3% of the new construction costs. Steel made in the United States is stamped with the country of origin, but the state of origin of steel or foundry products is not as readily available, and the DOA does not track the state of origin currently.

*Material, Equipment, or Durable Goods:* Generally, public works project costs are 50% materials and 50% labor. (Equipment is purchased separately through the Procurement Division, which would increase the amount of materials used in the project.) Using the information above, about \$25 M was spent on materials in CY 2008. Assuming a 15% premium for the use of Indiana-made material, equipment, or durable goods, the maximum cost of the Indiana-made premium would have been about \$3.8 M.

*Department of Administration:* In FY 2008, the DOA reverted \$28,742 to the state General Fund. On January 19, 2009, the DOA had 25 vacant positions with a combined salary of \$634,244.

*Appropriations:* As seen in the table below, from 2008 to 2015, the INDOT estimated it will spend \$694 M on the I-69 extension between Indianapolis and Evansville, with \$575 M being spent between 2010 and 2015. In FY 2008 and the first half of FY 2009, INDOT expended or encumbered \$3.0M on the project from the lease proceeds.

Year	Projected Costs
2008	\$ 44,000,000
2009	75,000,000
2010	100,000,000
2011	75,000,000
2012	100,000,000
2013	100,000,000
2014	100,000,000
2015	100,000,000
<b>Total</b>	<b>\$ 694,000,000</b>

**Explanation of State Revenues:** (Revised) *INDOT:* Money appropriated to the INDOT from the MMCF is used to obtain federal highway matching funds.

*Public Works Contracts:* The bill provides for a Class B infraction for the contractor who does not meet the required proportion of resident employees. There could be an infraction charged for each nonresident employed in excess of the number of nonresident employees allowed. If additional court cases occur and infraction judgments and court fees are collected, revenue to the state General Fund may increase. The maximum judgment for a Class B infraction is \$1,000, which is deposited in the state General Fund.

If court actions are filed and a judgment is entered, a court fee of \$70 would be assessed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), the public defense administration fee (\$3), the court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

*Tolling:* The bill prohibits tolling on the extension of I-69 between Indianapolis and Evansville. To the extent that additional state funds are needed to complete construction of the highway, this potential funding source would be unavailable.

**Explanation of Local Expenditures:** (Revised) *Public Works Contracts and Indiana Preference:* The proportions of Indiana residents employed by contractors and subcontractors would apply to local unit public works contracts. Also, the preference for using material, equipment, or durable goods made in Indiana applies to local units. This would have indeterminate fiscal impact on local public works projects.

**Explanation of Local Revenues:** (Revised) *Appropriations:* The bill appropriates \$400 M to counties

distributed pro rata based on population data from the Local Road and Street Account and \$400 M to cities and towns based on population data from the Motor Vehicle Highway Account distribution. The money may be used for construction, reconstruction, or maintenance of streets and alleys. The county, city, or town must appropriate the funds to shovel-ready projects before January 1, 2011. Any money not appropriated is returned to the MMCF by February 1, 2011.

*Public Works Contracts:* If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** DOA; Any state agency or commission entering into a public works contract; Ports of Indiana; INDOT.

**Local Agencies Affected:** Cities, towns, and counties; Local units entering into public works contracts; Trial courts, local law enforcement agencies.

**Information Sources:** Elizabeth Lerch, DOA; Budget Agency Auditor's Data, February 2, 2009; INDOT, *Major New Highway Construction, 2006-2015*, Updated May 16, 2006; INDOT, *Lease Proceeds - Major Moves Report*, July 30, 2008 and January 29, 2009.

**Fiscal Analyst:** Karen Firestone, 317-234-2106.